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BG-22

27 DEC 1988

MEMORANDUM FOR: Chief, Management Staff, DA

FROM: John M. Ray
Director of Logistics

REFERENCE: Memo for Heads of Executive Departments
and Agencies fm Executive Office of the
President, dtd 19 Oct 88, Same Subject

SUBJECT: Lease-Purchase Arrangements

1. The referenced memorandum states that lease-purchase options for facilities understate the true costs of acquisition, that Office of Management and Budget (OMB) strongly opposes such arrangements, and that leases should be fully-funded in the first year to avoid violation of the Anti-Deficiency Act (31 U.S.C. 1341). You have asked for the [redacted] reactions and an assessment of the impact that the OMB memorandum will have on future development [redacted]

2. In general, it is this office's opinion, that the OMB policy will have no effect on [redacted] current development plans because:

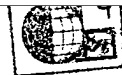
a. We consider the [redacted] like most other Agency facilities, to be a "special purpose facility" which is treated as an exception in the subject memorandum.

b. Funding for [redacted] is included in the "President's budget" as a separate and distinct line item and is certainly not a "proposal by Congress" to stretch out Administration funding requirements.

c. We believe that the "lease-purchase arrangements" discussed differ from the "purchase options" which have been mandated [redacted] If an option to purchase were

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exercised, then - current year funds would be used rather than spreading out the purchase payments over many years of a lease, unless a different arrangement is budgeted for and approved.

d. While it is generally true that any long-term financing and leasing arrangements are much more costly than outright purchase or direct funding of construction, it is extremely unlikely that the Administration would propose, or Congress would approve, such a large expenditure during the current tight fiscal environment.

25X1 e. Leasing arrangements [] are no more of an Anti-Deficiency problem than any other lease. So long as there is a commitment by Congress to fund the lease and a commitment by the Comptroller to allocate those funds, lease payment obligations do not violate the intent of the Anti-Deficiency Act, which states that obligations can be made in advance of appropriations, if authorized by law.

25X1 3. In addition to the above, we have advised the Comptroller that the use of the Federal Buildings Fund should be investigated for any future exercise of purchase options for the [] facility. This was in response to direction from the Senate Select Committee on Intelligence (SSCI) that the Central Intelligence Agency (CIA), Government Services Administration (GSA), and Office of Budget and Management (OMB) investigate the potential use of the Fund for expansion []

25X1 4. The intent of the subject OMB policy is to restrict agencies and Congress from acting independently of Executive/Legislative budget policies. In the case of the [] we believe that the Agency is acting in concert with the wishes and directions of OMB budget guidance and the Intelligence and Appropriations Committees of Congress.

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5. If additional information is required on this subject,
please contact [redacted] Chief, [redacted] on
extension [redacted]

John M. Ray

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RPO/OL, [REDACTED]

(20 Dec 1988)

Distribution:

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Orig & 1 - Addressee

1 - [REDACTED]

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1 - [REDACTED] Chrono File

1 - [REDACTED] Subject File

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 19, 1988
REVISED

M-89-01

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

Joseph R. Wright, Jr.
Joseph R. Wright, Jr.
Acting Director

SUBJECT:

Lease-Purchase Arrangements

A number of agencies and committees of Congress have proposed financing schemes involving lease-purchase arrangements that enable agencies to purchase capital assets without having to score the full cost of the purchase in the current budget year. Such arrangements understate the true cost of capital acquisitions in the budget and allow the appearance of lower near-term outlays and budget authority at the expense of higher long-term costs. This memorandum describes the Administration's current policy with respect to lease-purchase proposals.

The President recently approved recommendations by the Domestic Policy Council to oppose the use of lease-purchase arrangements. The only exception to this is proposals to lease-purchase special purpose facilities, which may be considered on a case-by-case basis, as part of the annual budget review process. In addition, the Administration will strongly oppose any lease-purchase proposal by Congress that is not included in the President's budget.

Lease-purchase arrangements are leases of capital assets where material ownership in the asset -- i.e., most of the risks and rewards of ownership -- is transferred from the lessor to the lessee. Essentially, lease-purchase is an arrangement which provides a Federal agency with the authority to acquire effective ownership of existing facilities or to sign contracts with private developers to construct buildings or other facilities and pay the developers over an extended period of time as opposed to paying the developer as the construction is completed.

Lease-purchase arrangements are more costly to the Federal Government than the outright purchase or construction of an asset since agencies must pay the cost of the lessor's borrowing, which is more expensive than the cost of Treasury borrowing. Lease-purchase arrangements also create secondary markets for Federal Government borrowing, which compete with Treasury's borrowing and drive up the cost. In addition, they encourage pork barrel spending and bias decision-making. Furthermore, unlike assets that are purchased directly, property acquired under lease-purchase is encumbered with respect to disposal by the Federal Government. In considering whether to use leasing in place of direct government purchase and ownership as a means of acquiring the use of capital

assets, OMB Circular No. A-104 requires agencies to conduct a lease-versus-buy analysis.

Like all contracts of the Federal Government, leases are subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341). The Act requires the lessee agency to obligate sufficient funds to cover the Federal Government's maximum current liability unless Congress specifically says otherwise. Many proposed lease-purchase arrangements include specific language exempting the transactions from the Anti-Deficiency Act to allow agencies to enter into multi-year contracts and obligate only annual costs. Exemptions from the Anti-Deficiency Act violate the fundamental principle that the funding of all government activity be fully and publicly displayed and should be strongly opposed.

Another objectionable method used to circumvent the requirements of the Anti-Deficiency Act and avoid front-end scoring of budget authority is to enter into lease-purchases that are clearly intended to be long-term but are written to limit the Federal Government's liability. Such methods should be strongly opposed. In the event lease-purchase arrangements do contain contract clauses that expressly condition the Federal Government's obligation to pay on the availability of appropriations, they should be fully-funded and require sufficient budget authority to cover the full lifetime cost of the lease in the first year of the lease.

THE WHITE HOUSE

WASHINGTON

August 3, 1988

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

SUBJECT: Lease/Purchase Policy

Pursuant to the Domestic Policy Council meeting on the use of lease/purchase arrangements for the acquisition of capital items, the President has decided that the Administration will:

1. Strongly oppose lease/purchase of general purpose office space, on grounds that lease/purchase avoids budgetary controls, that it could lead to uncontrollable congressional spending, and that current rental payments by agencies are adequate to meet the government's reasonable general purpose office space needs.
2. Consider agency proposals to lease/purchase special purpose space such as prisons, courthouses, laboratories, and computer and telecommunications facilities on a case-by-case basis, as part of the annual budget review process.
3. Strongly oppose any lease/purchase proposal by Congress that is not included in the President's Budget.

Edwin Meese III
Edwin Meese III
Chairman Pro Tempore